

§ 785.10

this chapter. Section 4 of the Portal-to-Portal Act does not affect the computation of hours worked within the “workday”. “Workday” in general, means the period between “the time on any particular workday at which such employee commences (his) principal activity or activities” and “the time on any particular workday at which he ceases such principal activity or activities.” The “workday” may thus be longer than the employee’s scheduled shift, hours, tour of duty, or time on the production line. Also, its duration may vary from day to day depending upon when the employee commences or ceases his “principal” activities. With respect to time spent in any “preliminary” or “postliminary” activity compensable by contract, custom, or practice, the Portal-to-Portal Act requires that such time must also be counted for purposes of the Fair Labor Standards Act. There are, however, limitations on this requirement. The “preliminary” or “postliminary” activity in question must be engaged in during the portion of the day with respect to which it is made compensable by the contract, custom, or practice. Also, only the amount of time allowed by the contract or under the custom or practice is required to be counted. If, for example, the time allowed is 15 minutes but the activity takes 25 minutes, the time to be added to other working time would be limited to 15 minutes. (*Galvin v. National Biscuit Co.*, 82 F. Supp. 535 (S.D.N.Y. 1949) appeal dismissed, 177 F. 2d 963 (C.A. 2, 1949))

(b) *Section 3(o) of the Fair Labor Standards Act.* Section 3(o) gives statutory effect, as explained in § 785.26, to the exclusion from measured working time of certain clothes-changing and washing time at the beginning or the end of the workday by the parties to collective bargaining agreements.

[26 FR 190, Jan. 11, 1961, as amended at 30 FR 9912, Aug. 10, 1965]

Subpart C—Application of Principles

§ 785.10 Scope of subpart.

This subpart applies the principles to the problems which arise frequently.

29 CFR Ch. V (7–1–10 Edition)

EMPLOYEES “SUFFERED OR PERMITTED” TO WORK

§ 785.11 General.

Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift. He may be a pieceworker, he may desire to finish an assigned task or he may wish to correct errors, paste work tickets, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that he is continuing to work and the time is working time. (*Handler v. Thrasher*, 191 F. 2d 120 (C.A. 10, 1951); *Republican Publishing Co. v. American Newspaper Guild*, 172 F. 2d 943 (C.A. 1, 1949); *Kappler v. Republic Pictures Corp.*, 59 F. Supp. 112 (S.D. Iowa 1945), aff’d 151 F. 2d 543 (C.A. 8, 1945); 327 U.S. 757 (1946); *Hogue v. National Automotive Parts Ass’n*, 87 F. Supp. 816 (E.D. Mich. 1949); *Barker v. Georgia Power & Light Co.*, 2 W.H. Cases 486; 5 CCH Labor Cases, para. 61,095 (M.D. Ga. 1942); *Steger v. Beard & Stone Electric Co., Inc.*, 1 W.H. Cases 593; 4 Labor Cases 60,643 (N.D. Texas, 1941))

§ 785.12 Work performed away from the premises or job site.

The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.

§ 785.13 Duty of management.

In all such cases it is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

WAITING TIME

§ 785.14 General.

Whether waiting time is time worked under the Act depends upon particular circumstances. The determination involves “scrutiny and construction of